

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 IO-13 ISO-00 DOTE-00 CAB-09 CIAE-00

COME-00 DODE-00 EB-11 INR-10 NSAE-00 RSC-01 FAA-00

SY-10 USSS-00 NSCE-00 SSO-00 USIE-00 INRE-00 PM-07

H-03 NSC-10 PA-03 PRS-01 SS-15 DRC-01 SCA-01 JUSE-00

SR-02 ORM-03 OIC-04 /133 W

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FM AMEMBASSY ROME

TO SECSTATE WASHDC IMMEDIATE 660

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY MOSCOW

AMCONSUL MONTREAL

USMISSION USUN NEW YORK

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E.O. 11652: GDS

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: SOVIET PROPOSAL

PLS PASS: LITTELL/CAB; DRISCOLL/DOT: STEWART/FAA

MONTREAL FOR US REP ICAO

FROM AMBASSADOR ROUNTREE

REF: (A) ROME 9251 (B) ROME 9252 (C) STATE 176035

FOLLOWING ARE EXPLANATIONS PROVIDED BY SOVIETS

SEP 7 AND RATIONALE OF WESTERN EUROPEANS IN THIS REDRAFT

ON REVISED SOVIET PROPOSAL (SENT REF A). LEGAL/TECHNICAL

COMMENTS ARE THOSE OF USDEL H.R. GAITHER BASED UPON HIS

EXPERIENCE NEGOTIATING EXTRADITION TREATIES FOR USG:

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1. REDRAFT BY WESTERN EUROPEANS AIMED AT ACCOMPLISHING

TWO OBJECTIVES: (A) A PREFERENTIAL SYSTEM OF EXTRADI-

TION AS OPPOSED LOCAL PROSECUTION AND (B) IF EXTRADITION

TO BE GRANTED, PREFERENCE SHOULD BE GIVEN TO STATE OF

REGISTRY.

2. PREFERENTIAL SYSTEM ADOPTED BY WESTERN EUROPEANS AS BEING ONLY SYSTEM POSSIBLE OF ACCEPTANCE BY CONFERENCE. IN SPITE OF WHAT SOVIETS HAD INDICATED TO USDEL AND ON FLOOR, THEY AGREED AT SEPT 7 MTG THAT REVISED PROTOCOL DEBATED SEPT 3 WOULD HAVE SET UP A MANDATORY OR AUTOMATIC SYSTEM OF EXTRADITION WITH NATIONALITY ONLY EXCEPTION.

3. REFERENCE IN SUBPARA (A) OF NEW DRAFT (REF A) TO QTE NATIONAL LAW AND ITS PRACTICE UNQTE INTENDED TO INCORPORATE NOT ONLY STATE'S SUBSTANTIVE EXTRADITION LAW AND PROCEDURE BUT PROVISIONS ON ASYLUM AS WELL. QTE PRACTICE UNQTE PUT IN FOR SAFEGUARDING ANYTHING THAT MIGHT HAVE BEEN LEFT OUT IN REFERENCE TO QTE NATIONAL LAW UNQTE. PARTICULARLY PRACTICE WHICH STATE MIGHT HAVE OF NOT EXTRADITIONING REFUGEES TO CERTAIN STATES. THIS WOULD ALSO COVER PRACTICE OF SEVERAL EUROPEAN STATES NOT TO EXTRADITE RESIDENTS AS WELL AS PREFERENCE TO RETURN OFFENDER TO STATE OF NATIONALITY OR RESIDENCE.

4. REFERENCE SUBPARA (A) TO QTE ANY OTHER CONTRACTING STATE UNQTE INTENDED (AND SOVDEL AGREED) TO REFER TO STATE CONTRACTING PARTY TO HAGUE OR MONTREAL, NOT JUST TO PROTOCOL. THUS IF TWO STATES REQUESTED EXTRADITION, ONLY ONE OF WHICH PARTY TO PROTOCOL, PROTOCOL DID NOT CREATE PREFERENCE FOR STATE PARTY TO PROTOCOL.

5. REFERENCE SUBPARA (A) TO STATE QTE ENTITLED TO EXTRADITION UNQTE WAS SPECIFICALLY LEFT BROAD TO COVER OFFENSES WHICH MIGHT RELATE TO AIR SAFETY BUT WHICH MIGHT NOT SPECIFICALLY BE LISTED IN MONTREAL CONVENTION.

6. PROVISION ON NATIONALITY LEFT IN AS BEING OPTICALLY NECESSARY FOR A NUMBER OF STATES. GAITHER COMMENT: IN CASE OF US, THIS PROVISION WOULD AVOID NECESSITY OF INCLUDING CONFIDENTIAL

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A PROVISION ON NATIONALITY IN ANY LEGISLATION, WHICH MIGHT BECOME NECESSARY. SUCH AVOIDANCE WOULD BE DESIRABLE SINCE TO INCORPORATE NATIONALITY EXCLUSION IN EXTRADITION LAW WOULD SERIOUSLY AFFECT LARGE NUMBER OF OUR TREATIES AND OUR POLICY TO EXTRADITE US NATIONALS. LATTER POLICY BASED ON BOTH LEGAL GROUND OF OUR INABILITY TO PROSECUTE LOCALLY IN MAJORITY OF CASES AND POLICY GROUND OF WISHING TO HAVE OFFENDER PUNISHED WHERE ACT COMMITTED. END COMMENT

7. SUBPARA (C) INSERTED BY SOVIETS TO MEET INSISTENCE BY NUMBER OF DELS THAT THERE BE NO CONFLICT BETWEEN PROTOCOL AND OBLIGATIONS UNDER EXTRADITION TREATIES. THIS PROVISION ALSO INTENDED TO GIVE

FLEXIBILITY PERMITTING EXTRADITION PURSUANT TO EXTRADITION TREATY FOR OFFENSE WHICH HAD ONLY PERIPHERAL EFFECT ON AIR SECURITY. WESTERN EUROPEANS ACCEPTED SUBPARA ON ADDITIONAL BASIS IT COULD ALSO CONSTITUTE ESCAPE CLAUSE WHERE QTE PREFERENTIAL UNQTE ASPECT OF UNDERTAKING WISHED BE IGNORED FOR DOMESTIC POLITICAL REASONS.

8. GAITHER COMMENT: CURSORY REVIEW OF 18 U.S. C. SECTIONS ON EXTRADITION SUGGESTS RATIFICATION BY US WOULD REQUIRE ENABLING LEGISLATION. AS PROTOCOL HAS NO PROCEDURAL PROVISIONS WE WOULD HAVE NO PRESENT STATUTORY PROVISIONS WHICH COULD APPLY. DOUBT "PRACTICE" UNLESS MODIFIED WITH REFERENCE TO EXTRADITION TREATY PROCEDURES WOULD SUFFICE. UNDER PRESENT PRACTICE AND STATUTES, GAITHER DOES NOT SEE ANY PROHIBITION OF SOVIETS BRINGING A CASE DIRECTLY TO A US COURT RATHER THAN THROUGH DIPLOMATIC CHANNEL. PRESENT TEXT HAS NO PROVISION THAT WOULD RESOLVE REFUGEE PROBLEM RAISED BY DEPT IN REF (C). DIFFICULT TO CONCEIVE OF ANY FORMULATION THAT WOULD SATISFY THESE CONCERNS. ADDITIONALLY, CONCUR IN CONCERN EXPRESSED BY DEPT IN REF (C) THAT ANY ENABLING LEGISLATION MIGHT HAVE SERIOUS IMPACT ON PRESENT BILATERAL EXTRADITION TREATIES WHICH ELIMINATE POLITICAL OFFENSE EXCEPTION FOR HIJACKING. ANOTHER QUESTION IS WHETHER ENABLING LEGISLATION WHICH PRESENT REDRAFT MIGHT REQUIRE IF USG RATIFIED WOULD EXCEED POLITICAL OFFENSES EXCLUSION IN OTHER AREAS OF EXTRADITION. NET RESULT COULD BE NEED TO RENEGOTIATE MANY MORE TREATIES OR BE IN VIOLATION
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OF PRESENT TREATY COMMITMENTS. END COMMENT.

9. IF DEPT LEGAL EXPERTS AGREE WITH FOREGOING ANALYSES CONSIDERATIONS, USDEL SUGGESTS DEPT CONSIDER TWO POSSIBLE COURSES OF ACTION FOR USDEL: (A) ALTERNATIVE ONE--IF DEBATE AND VOTE ON QUESTIONS OF PRINCIPLE CONCERNING INDEPENDENT CONVENTION SCHEDULED FOR SEP 12 SHOW SOME PROSPECT FOR DEVELOPMENT ACCEPTABLE INDEPENDENT CONVENTION, USDEL KGHT UPROACH SOVDEL AND INDICATE THAT SERIOUS LEGAL COMPLICATIONS ON US EXTRADITION SYSTEM WILL BE CAUSED BY OUR ADHERENCE PROPOSED PROTOCOL. ACCORDINGLY, USDEL WOULD NOT BE ABLE GIVE FURTHER VOCAL SUPPORT TO PROPOSAL THAN THAT ALREADY GIVEN. WE WOULD, HOWEVER, WOULD SO INDICATE. IN RETURN WE WOULD EXPECT FAVORABLE SOVIET VOTE ON INDEPENDENT CONVENTION. AT SAME TIME WE WOULD INDICATE INFORMALLY USG HAS SERIOUS DOUBTS THAT WE WOULD EVER BE ABLE RATIFY PROTOCOL DUE TO UNIQUE PROBLEMS US HAS IN EXTRADITION AREA WHEREIN SYSTEM BASED ON TREATIES OF EXTRADITION AND CASE LAW, BOTH OF WHICH GOVERN SUBSTANTIVE AND PROCEDURAL RULES ON EXTRADITION.

(B) ALTERNATIVE TWO--IF DEBATE AND VOTES ON PRINCIPAL QUESTIONS CONCERNING CONVENTION SHOW US REAL PROSPECT FOR

ACCEPTABLE INDEPENDENT CONVENTION, DEPT SHOULD CONSIDER WHETHER USDEL SHOULD SEEK PRIVATELY AND DISCREETLY OR EVEN PUBLICLY TO ENSURE FAILURE OF SOVIET PROPOSAL. THIS MIGHT PREVENT SOVIET PROPOSAL FROM BEING ONLY RESULT OF ROME MEETINGS. IF DEPT CONCLUDED ADOPTION SOLELY OF THIS PROPOSAL WOULD BE ILLUSORY RESPONSE TO HIJACKING MENACE, IT MIGHT PREFER HAVE NO RESULT AT ALL. IN CONSIDERING THIS ISSUE, HOWEVER, DEPT WOULD OBVIOUSLY WISH WEIGHT CONSEQUENCES SUCH ACTION ON US-SOVIET BILATERAL RELATIONS AND FACT AMERICAN AIRLINE PILOTS ASSOCIATION AND MANY CONGRESSMEN FAVOR ACONCEPT OF MANDATORY EXTRADITION IN ALL CASES AND THUS GOING BEYOND SOVIET PROPOSAL.

11. APPRECIATE DEPT'S INSTRUCTIONS SOONEST REGARDING ABOVE ALTERNATIVES.

12. PER GAITHER/MALMBORG TELCON, WE CAN TRY TO AMEND TEXT BUT DO NOT WISH APPROACH SOVIETS ON SUBJECT UNTIL CONFIDENTIAL

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SO INSTRUCTED. WE VIEW MILMBORG SUGGESTION THAT PHRASE BE INSERTED AFTER "PRACTICE" OF "OR WHEN APPLICABLE PRACTICE WITH RESPECT TO EXTRADITION AS EMBODIED IN BILATERAL EXTRADITION TREATIES GENERALLY", AS POTENTIAL SHORT-TERM SOLUTION AND ONE WHICH PROBABLY GAIN SUPPORT KENYA. WILL DISCUSS PROPOSED CHANGE WITH KENYA AND APPROACH SOVIETS WHEN SO INSTRUCTED.

13. AFTER ABOVE DRAFTED, WE HAVE LEARNED ITALIANS WILL NOT RPT NOT CO-SPONSOR PROPOSAL DUE TO LACK OTHER WESTERN EUROPEAN CO-SPONSORS BUT WILL SUPPORT IN CONFERENCE. VOLPE

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